

filed 2/21/19

COMMONWEALTH OF MASSACHUSETTS
Department of the Trial Court

Barnstable, ss

LAND COURT DEPARTMENT
No. 19 MISC 000009 (MDV)

THE HAVEN CENTER, INC. and
MACARTHUR PARK PLACE LLC,
Plaintiffs,

v.

TOWN OF BOURNE and PETER J.
MEIER, JUDITH MACLEOD-FROMAN,
JAMES L. POTTER, GEORGE G. SLADE,
and JARED P. MACDONALD, as
Members of the Board of Selectmen of the
Town of Bourne,
Defendants.

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

Now come plaintiffs The Haven Center, Inc. and MacArthur Park Place, LLC and move this Court pursuant to MassR.Civ.P. 26(c) for a protective order that defendant Town of Bourne not be permitted to depose: 1) the Chief Executive of Haven Center, Inc.; and 2) MacArthur Park Place, LLC as noticed in the deposition notices attached hereto as Exhibit A.

As reasons therefore, plaintiffs state that it has moved this Court to dismiss Counts 3 and 4 of its Complaint, and therefore the only issue before the Court is determination of the validity of the Bourne general bylaw of October 1, 2018 prohibiting non-medical marijuana uses. Such determinations require only review of the various bylaws and records of the Town of Bourne, and the legislative history of G.L. c. 40A and G.L. c. 94G, and briefing and argument by counsel.


In order to maintain an action under G.L. c. 240, §14A, a plaintiff need only be "the owner of a freehold estate in possession in land," and therefore as the owner of the land in

Bourne, plaintiff MacArthur Park Place, LLC need prove nothing more. A true copy of MacArthur's recorded deed of land at 340 MacArthur Boulevard is attached as Exhibit B.

In order to maintain a declaratory judgment action under G.L. c. 231A, §§ 1 et seq., plaintiffs need only establish there is an actual case or controversy. Defendant is well aware that plaintiff Haven Center, Inc. has been seeking approval of a retail marijuana establishment at 340 MacArthur Boulevard, but in any event plaintiffs submit that limited discovery in the nature of a Request for Production of Documents would suffice to establish an actual case or controversy and be less intrusive for the parties.

Respectfully submitted this February 21, 2019,

PLAINTIFFS THE HAVEN CENTER, INC.,
and MACARTHUR PARK PLACE LLC,
by their attorney,

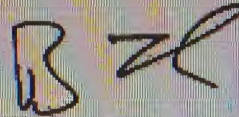


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CERTIFICATE OF COMPLIANCE WITH LAND COURT RULE 7

I, Benjamin E. Zehnder, hereby certify that I conferred with defendants' counsel Robert Troy via telephone on February 21, 2019 at 9:45 AM in order to narrow the areas of disagreement to the fullest possible extent.

Dated: February 21, 2019



Benjamin E. Zehnder

CERTIFICATE OF SERVICE

I, Benjamin E. Zehnder, hereby certify that on the below date, I served a true copy of the attached document via first-class mail, postage prepaid and via email to all counsel of record as follows:

Robert S. Troy, Esq. - rst@troywallassociates.com
90 Route 6A
Sandwich, MA 02653

Dated: February 21, 2019



Benjamin E. Zehnder